

Schuylkill Contracting Company and Cass Contracting Company and United Mine Workers of America. Cases 4-CA-13869 and 4-CA-13869-2

29 June 1984

DECISION AND ORDER

CHAIRMAN DOTSON AND MEMBERS
ZIMMERMAN AND DENNIS

Upon charges filed by the Union 25 July and 8 August 1983, the General Counsel of the National Labor Relations Board issued a consolidated complaint 16 September 1983 against Respondent Schuylkill Contracting Company and Respondent Cass Contracting Company, alleging that they have violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charges and consolidated complaint, the Respondents have failed timely to file an answer.

On 9 November 1983 the General Counsel filed a Motion for Summary Judgment. On 17 November 1983 the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondents thereafter filed a response to the Motion for Summary Judgment, including an answer to the consolidated complaint. The Union filed a response to the notice and a Motion for Summary Judgment, and a supplemental response.¹

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.²

Ruling on Motion for Summary Judgment

Section 102.20 of the Board's Rules and Regulations provides that the complaint allegations shall be deemed admitted if an answer is not filed within 10 days from service of the complaint, unless good cause is shown. The complaint states that, unless an answer is filed within 10 days of service, "all the allegations in the Consolidated Complaint shall be deemed to be admitted to be true and may be so found by the Board." As no answer was filed and no extension of time to answer requested or granted before the due date, the General Counsel filed the Motion for Summary Judgment pursuant to

Sections 102.20³ and 102.21 of the Board's Rules and Regulations, and the Board subsequently issued the Notice to Show Cause.

The Respondents' answer to the motion admits service and receipt of the charges and consolidated complaint. The Respondents further admit failure to answer the consolidated complaint within the prescribed time,⁴ explaining that they provided the General Counsel, by letter of 18 October 1983, that part of the Union's requested information which the Respondents reasonably believed the Union was entitled to receive. The Respondents admit that they failed to comply with the Board's Rules concerning the filing of an answer and that the consolidated complaint allegations should be admitted as true and so found by the Board. The Respondents further explain, however, that they failed promptly to file an answer because they believed that their 18 October 1983 letter directly fulfilled their obligation to answer the consolidated complaint. Finally, the Respondents incorporated with their answer to the Motion for Summary Judgment an answer to the consolidated complaint.

As the Motion for Summary Judgment points out, the time for filing an answer to the consolidated complaint expired 29 September 1983. The Respondents did not respond until the 18 October 1983 letter. The letter was delivered to the Regional Office 20 October 1983, 3 weeks after the 29 September deadline, and was therefore not timely. In addition, the Respondents' 18 October 1983 letter does not satisfy Section 102.20 of the Board's Rules and Regulations because it does not specifically admit, deny, or explain each allegation of the consolidated complaint. The letter does not, therefore, serve as an answer within the meaning of the Board's Rules.⁵

We also find untimely the Respondents' attempt to answer the consolidated complaint by attaching an answer to that document to their response to the Motion for Summary Judgment. See *Middle Eastern Bakery*, 243 NLRB 503, 504 fn. 1 (1979); *Monroe Furniture Co.*, 231 NLRB 143 (1977).

Except for the Respondents' claim that they believed their 18 October letter fulfilled their obligations to answer the consolidated complaint, the Respondents' response offers no explanation regarding their failure to file a timely answer.⁶ We find that the Respondents' submissions do not constitute good cause for failing to file a timely answer within the meaning of Section 102.20 of the

¹ The Union filed a Motion for Summary Judgment on the same basis as the General Counsel.

² In granting the General Counsel's Motion for Summary Judgment, Chairman Dotson specifically relies on the total failure of the Respondents to contest either the factual allegations or the legal conclusions of the General Counsel's complaint. Thus, the Chairman regards this proceeding as being essentially a default judgment which is without precedential value.

³ The motion, at par. 3, inadvertently refers to Sec. 102.10.

⁴ The time for filing the answer expired 29 September 1983.

⁵ *American Steel Line Co.*, 253 NLRB 399, 400 (1980).

⁶ The Respondents never requested an extension of time in which to file an answer.

Board's Rules and Regulations. We therefore grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

Respondent Schuylkill, a Pennsylvania corporation with headquarters at Minersville, Pennsylvania, mines anthracite coal. During the 12 months preceding the complaint, it sold and shipped products, goods, and materials valued in excess of \$50,000 to Respondent Cass, an enterprise located within the Commonwealth of Pennsylvania.

Respondent Cass, a Pennsylvania corporation with headquarters at Minersville, Pennsylvania, prepares and resells anthracite coal. During the 12 months preceding the complaint, it sold and shipped products, goods, and materials valued in excess of \$50,000 directly to points outside the Commonwealth of Pennsylvania.

We find that the Respondents are employers engaged in commerce within the meaning of Section 2(6) and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. *The Units and the Union's Representative Status*

Since June 1978, Respondent Schuylkill has recognized the Union as the exclusive bargaining representative of its employees in a unit (Unit A) described in article 2, sections (b) and (c), of their most recent collective-bargaining agreement, effective by its terms from 1 May 1978 to 31 April 1981. Unit A is appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

Since June 1978, Respondent Cass has recognized the Union as the exclusive bargaining representative of its employees in a unit (Unit B) described in article 2, sections (b) and (c), of their most recent collective-bargaining agreement, effective by its terms from 1 May 1978 to 31 April 1981. Unit B is appropriate for the purpose of collective bargaining within the meaning of Section 9(b) of the Act.

B. *The Refusals to Bargain*

Since 25 January 1983 Respondent Schuylkill has laid off certain employees in Unit A, and Respondent Cass has laid off certain employees in Unit B,

without notice to or bargaining with the Union over the layoffs and the effects of the layoffs.

Since about 19 July 1983, orally, and since about 29 July 1983 by letter, the Union requested Respondent Schuylkill and Respondent Cass to furnish the Union with the following information necessary and relevant to its role as the exclusive collective-bargaining representative of the employees in Units A and B: (1) the layoff dates at Schuylkill and Cass; (2) the number and names of the bargaining unit employees affected by the layoffs; (3) the names of those who decided that the layoffs would take place; (4) the reasons for the layoffs; (5) how long in advance the layoffs had been planned; (6) the names of any recalled employees and the dates they returned to work; and (7) the names, addresses, classifications, wage rates, and dates of hire and birth of all Unit A and B employees. Since about 19 July 1983 Respondent Schuylkill and Respondent Cass have each failed and refused to furnish the information to the Union.

By the conduct described above, Respondent Schuylkill and Respondent Cass have violated Section 8(a)(5) and (1) of the Act.

CONCLUSIONS OF LAW

1. By laying off certain employees in Unit A without notice to or bargaining with the Union concerning the layoffs and the effects of the layoffs, Respondent Schuylkill has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

2. By laying off certain employees in Unit B without notice to or bargaining with the Union concerning the layoffs and the effects of the layoffs, Respondent Cass has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

3. By failing and refusing to provide the Union with information it requested 19 July and 29 July 1983 concerning the layoff dates at Schuylkill and Cass; the number and names of the bargaining unit employees affected by the layoffs; the names of those who decided that the layoffs would take place; the reasons for the layoffs; how long in advance the layoffs had been planned; the names of any recalled employees and the dates they returned to work; and the names, addresses, classifications, wage rates, and dates of hire and birth of all Unit A and B employees, Respondents Schuylkill and Cass have respectively engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(5) and (1) and 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have each engaged in certain unfair labor practices, we shall order them to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondents violated Section 8(a)(5) and (1) of the Act by laying off employees since 25 January 1983 without notice to or bargaining with the Union about the layoffs or the effects of the layoffs, we shall inter alia order the Respondents to rescind the unilateral layoffs if so requested by the Union, and to make whole the laid-off employees for any loss of earnings and other benefits suffered as a result of the Respondents' unfair labor practices. All employees affected by the unilateral layoffs, however, are not ipso facto entitled to payments of some kind. Whether any particular employee would have been laid off but for the unfair labor practices, for what period of time, whether any particular employee is entitled to reinstatement or reimbursement and, if so, in what amount, are questions to be resolved in a compliance proceeding if the parties are unable to reach agreement on these issues. See *Wellman Industries*, 222 NLRB 204, 208 (1976), *enfd.* 549 F.2d 830 (D.C. Cir. 1977).

Having found that the Respondents violated Section 8(a)(5) and (1) by failing and refusing to provide the Union with relevant and necessary information requested 19 July and 29 July 1983, we shall order them to furnish the requested information to the Union.

ORDER

The National Labor Relations Board orders that
A. Respondent Schuylkill Contracting Company, Minersville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America as the exclusive bargaining representative of the employees in the bargaining unit, by unilaterally laying off employees, and by refusing to bargain with the Union concerning the effects of the layoffs.

(b) Failing and refusing to furnish the Union the relevant and necessary information it requested 19 July and 29 July 1983.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with United Mine Workers of America concerning layoffs of employees

and the effects of the layoffs on employees in the unit described in article 2, sections (b) and (c) of their most recent collective-bargaining agreement, effective by its terms from 1 May 1978 to 31 April 1981.

(b) On request, rescind its layoffs of unit employees since about 25 January 1983, and make whole employees for loss of earnings and other benefits suffered by them as a result of its unilateral layoffs as provided by the remedy section of this decision.

(c) Furnish the Union the relevant and necessary information it requested 19 and 29 July 1983, including information concerning the layoff dates at Schuylkill; the number and names of the bargaining unit employees affected by the layoffs; the names of those who decided that the layoffs would take place; the reasons for the layoffs; how long in advance the layoffs had been planned; the names of any recalled employees and the dates they returned to work; and the names, addresses, classifications, wage rates, and dates of hire and birth of all unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Minersville, Pennsylvania places of business copies of the attached notice marked "Appendix A."⁷ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent Schuylkill's authorized representative, shall be posted by Respondent Schuylkill immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent Schuylkill to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Schuylkill has taken to comply.

B. Respondent Cass Contracting Company, Minersville, Pennsylvania, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Refusing to bargain with United Mine Workers of America as the exclusive bargaining repre-

⁷ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

sentative of the employees in the bargaining unit, by unilaterally laying off employees, and by refusing to bargain with the Union concerning the effects of the layoffs.

(b) Failing and refusing to furnish the Union with the relevant and necessary information it requested 19 July and 29 July 1983.

(c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with United Mine Workers of America concerning layoffs of employees and the effects of the layoffs on employees in the unit described in article 2, sections (b) and (c) of their most recent collective-bargaining agreement, effective by its terms from 1 May 1978 to 31 April 1981.

(b) On request, rescind its layoffs of unit employees since about 25 January 1983, and make whole employees for loss of earnings and other benefits suffered by them as a result of its unilateral layoffs as provided by the remedy section of this decision.

(c) Furnish the Union the relevant and necessary information it requested 19 July and 29 July 1983, including information concerning the layoff dates at Cass; the number and names of the bargaining unit employees affected by the layoffs; the names of those who decided that the layoffs would take place; the reasons for the layoffs; how long in advance the layoffs had been planned; the names of any recalled employees and the dates they returned to work; and the names, addresses, classifications, wage rates, and dates of hire and birth of all unit employees.

(d) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Post at its Minersville, Pennsylvania places of business copies of the attached notice marked "Appendix B."⁸ Copies of the notice, on forms provided by the Regional Director for Region 4, after being signed by Respondent Cass' authorized representative, shall be posted by Respondent Cass immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Re-

spondent Cass to ensure that the notices are not altered, defaced, or covered by any other material.

(f) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent Cass has taken to comply.

APPENDIX A

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America as the exclusive bargaining representative of the employees in the bargaining unit, by unilaterally laying off employees, and by refusing to bargain with the Union concerning the effects of the layoffs.

WE WILL NOT fail and refuse to furnish the Union the relevant and necessary information it requested 19 July and 29 July 1983.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union concerning layoffs of employees and the effects of the layoffs on employees in the unit described in article 2, sections (b) and (c), of our most recent collective-bargaining agreement, effective by its terms from 1 May 1978 to 31 April 1981.

WE WILL, on request, rescind our layoffs of unit employees since about 25 January 1983, and make whole employees for loss of earnings and other benefits suffered by them as a result of our unilateral layoffs for the period decided by the National Labor Relations Board, with interest.

WE WILL furnish the Union the relevant and necessary information it requested 19 July and 29 July 1983, including information concerning the layoff dates; the number and names of the bargaining unit employees affected by the layoffs; the names of those who decided that the layoffs would take place; the reasons for the layoffs; how long in advance the layoffs had been planned; the names of any recalled employees and the dates they returned to work; and the names, addresses, classifications, wage rates, and dates of hire and birth of all unit employees.

⁸ See fn.7, above.

APPENDIX B

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CASS CONTRACTING COMPANY